83-898

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

EVERETTE ONEIL TURBERVILLE,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

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Question Presented

Where law enforcement officers have probable cause to believe that luggage contains contraband and where the luggage is subsequently placed in a vehicle, does the placing of the luggage in the vehicle authorize law enforcement officers to disregard the warrant requirement of the Fourth and Fourteenth Amendment of the United States Constitution and search the luggage without a search warrant, even though the vehicle was not searched and was not the suspected locus of contraband.

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v.

STATE OF ALABAMA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

Petitioner, Everette Oneil Turberville, respectfully prays that a Writ of Certiotari issue to review the judgment of the Alabama Supreme Court and the Court of Criminal Appeals for the State of Alabama, whereby substantial constitutional issues presented by Petitioner were not answered by either of the said Courts, even though timely raised.

Opinion Below

The rulings of the Court of Criminal Appeals as to the original appeal filed on

February 22, 1983, (First Division, Number 537) set forth in Appendix 1a.

The denial of Petitioner's application for rehearing as well as the motion for Rule 39(k), which was filed on May 17, 1983, as set forth infra in Appendix 2a.

The granting of a petition for writ of certiorari to the Court of Criminal Appeals by the Alabama Supreme Court on August 12, 1983, as set forth infra in Appendix 3a.

The writ of certiorari quashed as improvidently granted by the Alabama Supreme Court on October 3, 1983, as set forth in Appendix 4a.

Jurisdiction

The petition invokes this Court's jurisdiction pursuant to 28 USC §1257(3) in that it sets up a claim of the petitioner's rights under the right to be secure in his person, houses, papers, and effects against unreasonable searches and seizures as guaranteed to him in the Fourth and Fourteenth Amendment to the Constitution of the United States; hence, Petitioner's application to this Honorable Court to review the order of the Alabama Supreme Court dated October 3,

1983, and entered by the Clerk of the Alabama Court of Criminal Appeals on October 3, 1983.

Constitutional And Statutory Provisions

This case involves the Fourth and Fourteenth Amendments to the Constitution of the United States.

The Fourth Amendment to the Constitution of the United States states as follows:

> "The right of the people to be secure in their persons, houses, papers and effect against unreasonable searches and seizures, shall not be violated and no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

The Fourteenth Amendment to the Constitution of the United States, in pertinent parts, states as follows:

> "No State shall...deprive any person of life, liberty or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws."

Statement of the Case

The Petitioner, Everette Oneil Turberville, was arrested on October 15, 1981, by State and County law enforcement officers, and he was charged with trafficking illegal drugs.

On November 2, 1981, Defendant requested a preliminary hearing. And on November 4, 1981, Defendant filed a Motion to Suppress the Evidence in the District Court of Monroe County, Alabama, alleging that the evidence seized was seized as a result of an improper, illegal and otherwise unconstitutional search of Defendant's personal property. The Motion to Suppress further alleged that the Defendant's Fourth Amendment rights against unreasonable searches and seizures had been violated, and that the Defendant had been deprived of his rights under the Fourteenth Amendment of the United States Constitution and the Constitution and Laws of the State of Alabama. The Motion to Suppress also alleged that the search and seizure was made without a search warrant and in violation of the Fourth Amendment and the Fourteenth Amendment of the United States Constitution

and the Constitution and Laws of the State of Alabama. The Motion to Suppress also alleged that the officers seized and searched Defendant's personal property, viz., a repository for personal effects without a search warrant and thereby violated the Fourth and Fourteenth Amendment of the United States Constitution and the Constitution and Laws of the State of Alabama. The Motion to Suppress the Evidence was subsequently denied by the District Court, and the Defendant, after a perliminary hearing, was bound over to the Grand Jury for further action.

During the Spring Session of 1982, the Grand Jury of Monroe County, Alabama, returned an indictment charging the Petitioner with possession of marijuana. On May 19, 1982, Petitioner filed another Motion to Suppress the Evidence, setting out and alleging the same grounds as heretofore shown to have been raised in the District Court and denied by said Court. This Motion to Suppress was filed in the Circuit Court of Monroe County, Alabama. Subsequent to the filing of this Motion to Suppress, the Petitioner waived his right to a jury trial and submitted the case to the Circuit Court to a non-jury trial based upon the trans-

cribed testimony which had been previously taken during the preliminary hearing of this matter.

At the hearing on the Motion to Suppress and the evidence that was submitted to both the District Court and the Circuit Court in its determination of the Motion to Suppress, the following evidence was submitted:

The State's evidence tends to show that Deputy Sheriff, Steve Griffis, received information from a reliable informant that Appellant was staying at the Monroe Motor Court Downtown in Monroeville, Alabama.

The informant further told Deputy Griffis that there was a large quantity of marijuana that was in a large, brown suitcase in the Downtown Motor Court.

Deputy Griffis testified that he established that the Appellant was at the Downtown Motor Court and set up a surveillance at approximately 7:00 P.M. Also, assisting Deputy Griffis in the surveillance was Sheriff Lenwood Sager, Larry Ikner, Investigator for the District Attorney's office and Deputy Gibson of the Monroe County Sheriff's Office.

Deputy Griffis testified that the surveillance was on the room at all times from

7:00 P.M. until the next morning when the Appellant left the room.

At daylight the next morning, all officers observed the Appellant leave the room with the large, brown suitcase. Also, all officers involved had the vehicle in sight from the time it left the motel until it was stopped.

Investigator Ikner testified that he had the motel room under surveillance during the whole time. He further testified that Appellant left the room with a large, brown suitcase and placed it in a vehicle.

Officer Griffis stated that he was told by Investigator Ikner that the brown suitcase was placed on the back seat of the vehicle.

The State's evidence shows that Deputy Griffis and Gibson fell immeidately in behind the Appellant, never losing sight of him. Griffis testified that after stopping the car, he had the Appellant go to the back of the vehicle with Deputy Gibson. Griffis stated that he placed Appellant in a position where he could not drive off;

> "Q At the particular time you observed the suitcase on the back seat, was Oneil Turberville still in a position where he

could drive off?

"A No, sir. He was out of the car. I made sure that he wasn't in a position where he could drive off."

Deputy Griffis testified that he removed an article of clothes off the brown suitcase by pushing the article aside.

Griffis also stated that when he stopped the car, he observed a large, brown suitcase on the back seat with a brown clothes bag on top of it.

In answer to the District Attorney's questions about whether he searched the suitcase, Griffis testified:

"A That's the only thing I went for, was the BROWN SUITCASE. (Emphasis added.)

"Q That's the only thing you looked at? (Emphasis added.)

"A Yes, sir." (Emphasis added.)

Further testimony by Griffis:

"Q You were looking for the SUITCASE? (Emphasis added.)

"A That's what I was looking for." (Emphasis added.)

Deputy Griffis opened the suitcase and found that it contained marijuana, which was placed in two heavy duty garbage bag--dark, green bags that he could not see through. He stated that they were sealed up with the type of "seals" that you fasten a loaf of bread.

Griffis testified that the suitcase was a large, brown suitcase that zipped up and then had buckles on it. Both the buckles and the zipper were closed when Griffis opened it, without a warrant.

This was a warrantless search of the brown suitcase at the place where Appellant's vehicle was stopped, and Appellant did not have control of the vehicle or the suitcase.

Deputy Griffis stated that he had known Appellant before; that he was not afraid of him; that Appellant had never given him any trouble; that Appellant did not have a violent record.

Griffis also testified that he arrested Appellant for what he found in the suitcase.

The Circuit Court, after considering the testimony previously taken, denied the

Motion to Suppress and further found Petitioner to be guilty of possession of marijuana and sentenced the Petitioner to five years in the State Penitentiary. From the denial of the Motion to Suppress and the conviction in the Circuit Court, Petitioner, Everette Oneil Turberville appealed to the Court of Criminal Appeals in the State of Alabama.

The Court of Criminal Appeals affirmed the Trial Court on May 3, 1983, without opinion. See Appendix 1a infra. Petitioner then filed an application for rehearing and a Rule 39(k) motion in the Court of Criminal Appeals on May 17, 1983, which was denied without opinion. See Appendix 2a infra.

Petitioner then filed a petition for writ of certiorari to the Court of Criminal Appeals in the Alabama Supreme Court, which was granted on August 12, 1983. See Appendix 3a infra.

The Supreme Court of Alabama subsequently quashed its writ as improvidently granted on October 3, 1983. See Apendix 4a infra.

REASONS FOR GRANTING THE WRIT

The facts in this case, which are identical to *Arkansas* v. *Sanders*, 42 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct.2586, present an opportunity for this Court to more fully clarify the holding in *United States* v. *Ross*, 456 U.S. 798, 72 L.Ed.2d 572, 102 S.Ct.2157. which held in part, "Although we have rejected some of the reasoning in *Sanders*, we adhere to our holding in that case."

This petition for writ of certiorari brings before this Honorable Court the question of whether a search warrant is required where the officers have probable cause to search a piece of luggage that is subsequently placed in a vehicle. Put another way, does the placing of the suspected locus of contraband into a vehicle negate the necessity of a search warrant, where the suspected locus is the personal luggage and not the automobile where the luggage was placed.

At no time did this case involve pro-

bable cause to believe that contraband was hidden in a vehicle. The State's evidence is absolutely clear that the officers were informed of, and that their probable cause was directed at, a "large, brown suitcase".

Petitioner further shows that the facts of Petitioner's case are almost identical to the case of the United States v. Chadwick, (US) 97 S.Ct.2476, 53 L.Ed.2d 538, and also Arkansas v. Sanders, 42 U.S.753, 61 L.Ed.2d 235, 99 S.Ct.2586.

In Arkansas v. Sanders, supra, the Court stated "the automobile exception from the warrant requirement will not be extended to the warrantless search of one's personal luggage merely because it was located in an automobile lawfully stopped by the police".

Further, the Court said in Sanders, supra, luggage is a common repository for one's personal effects, and therefore, it is inevitably associated with the expectation of privacy.

In the case of United States v. Chadwick, supra, this Court merely held that where officers have probable cause to believe a specific container contains contraband before the said container is placed in

an automobile, does not give rise to the automobile exception where the officers subsequently stopped a vehicle and seized the container.

There is no question based upon the facts in this case that the officers' probable cause was directed to one large, brown suitcase that was not placed in a vehicle until several hours after the Petitioner had been placed under surveillance. Therefore, this case is identical in fact to Chadwick, supra, and Sanders, supra.

It is Petitioner's contention that the part of Sanders, supra, which the Court in Ross, supra, rejected is that part dealing with any container in a vehicle which might be the repository of personal effects. The Court has simply said in Ross, supra, that where there is probable cause to believe that a vehicle is carrying contraband, then the officers have a right to search the entire vehicle and all contents therein.

It is Petitioner's position that the Court has not changed the rule that where probable cause exists to believe that a container contains contraband and is subsequently placed in a vehicle, then that fact alone, being the fact that the container was placed

in a vehicle, places it within the automobile exception. In Petitioner's case, there are no exigent circumstances. Based upon all of the testimony by the State, the officers had complete control of the large, brown suitcase, and the Appellant had no control whatsoever of the vehicle or the brown suitcase.

The facts in this case differ absolutely from Carroll v. United States, 267 US 132, 69 L.Ed.543, 45 S.Ct.280, Chambers v. Maroney, 399 U.S.42, 95 S.Ct.1975, 26 L. Ed.2d 419 (1970), California v. Robbins, 453 US 420, 69 L.Ed.2d 744, 101 S.Ct.2841, and the United States v. Ross, supra. In all of these cases, there was probable cause to believe that the vehicles contained contraband. While hoping not to be redundant, we merely point out to the Court that in the case before the Court, as well as in Chadwick, supra, and Sanders, supra, that probable cause was directed at a particular container which was subsequently placed in a vehicle. Accordingly, certiorari should be granted to review the substantial constitutional issued contained in Petitioner's case, and that this Court in addressing the issue could use the facts in this case

to more clearly set out that part of Sanders, supra, that Ross, supra, rejected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: Monroeville, Alabama
November 28, 1983

Respectfully submitted,

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APPENDIX

THE ALABAMA COURT OF CRIMINAL APPEALS
Montgomery, Alabama

RE: CC-82-16

1st Division, 537 Monroe County Circuit Court

EVERETTE TURBERVILLE,
Appellant,
v.
THE STATE,
Appellee.

Dear Sir: This is to advise you that on May 3, 1983, the Court of Criminal Appeals announced decision of:

Affirmance No opinion.

in the above stated cause.

Yours truly,
MOLLY JORDAN, CLERK

THE ALABAMA COURT OF CRIMINAL APPEALS
Montgomery, Alabama

RE: CC-82-16

1st Division, 537 Monroe County Circuit Court

EVERETTE TURBERVILLE,
Appellant,
v.
THE STATE,
Appellee.

Dear Sir: This is to advise you that on May 31, 1983, the Court of Criminal Appeals announced decision of:

Application for rehearing overruled.

No opinion.

in the above stated cause.

Yours truly,
MOLLY JORDAN, CLERK

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1983

Ex parte Everette O'Neil Turberville

82-862

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Everette Turberville

v.

State of Alabama)

PER CURIAM.

Writ granted.

Because the petition for writ of certiorari utilizing ARAP 39(k) raises a substantial constitutional issue not addressed by the appellate court, we remand this cause to the Court of Criminal Appeals for consideration of the search and seizure issue. See United States v. Place, [No. _____, June 30, 1983] 77 L.Ed.110 (1983).

WRIT GRANTED; CAUSE REMANDED.

All the Justices concur.

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1983

Ex parte Everette O'Neil Turberville

82-862

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Everette Turberville

v.

State of Alabama)

PER CURIAM.

RULES SUSPENDED; APPLICATION FOR RE-HEARING GRANTED; ORIGINAL OPINION WITHDRAWN; WRIT QUASHED AS IMPROVIDENTLY GRANTED.

All the Justices concur except Embry and Beatty, JJ., not sitting.

NO. 83-898

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1983

EVERETT ONEIL TURBERVILLE,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND COURT OF
CRIMINAL APPEALS OF ALABAMA

BRIEF AND ARGUMENT IN OPPOSITION TO THE WRIT

OF

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ATTORNEY GENERAL

AND

RICHARD L. OWENS
ASSISTANT ATTORNEY GENERAL

AND

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ATTORNEYS FOR RESPONDENT

NO. 83-898

IN THE SUPREME COURT OF THE
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OCTOBER TERM, 1983

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TABLE OF CONSTITUTIONAL PROVISIONS

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QUESTIONS PRESENTED

1. Where State law distinguishes between search warrants executable in the daytime and those executable in the nighttime, and where a "neutral and detached magistrate" finds probable cause and issues a "daytime warrant" for a certain premises, but exigent circumstances develop while the officers await sunrise, is an immediate search of the premises violative of the Fourth Amendment?

2. Where police officers have what has previously been judicially determined to be probable cause that a container contains marijuana, may the officers search that container when it is seized from a motor vehicle being driven on the public roadways?

PARTIES

In the Circuit Court of Monroe County, Alabama, the Court of Criminal Appeals and Supreme Court of Alabama the parties were: Everett Oneil Turberville, who is the Petitioner herein, and the State of Alabama, who is the Respondent herein.

The matters at issue here were first placed in issue in the Circuit (trial) Court and have been at issue throughout this litigation.

OPINIONS BELOW

All of the decisions of the lower courts were without written opinions and are therefore not reported. The Petitioner has correctly set forth in his appendix notifications from the respective court of their actions.

JURISDICTION

The Petitioner has invoked this Honorable Court's Jurisdiction under 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner is advancing an alleged claim under the Fourth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

On October 15, 1981 Petitioner, Everett Oneil Turberville, was arrested by law enforcement officers and charged with violating Alabama controlled substances laws. He requested a preliminary hearing, which was held on November 10, 1981. At the conclusion of this hearing, the Petitioner was bound over to the Monroe County Grand Jury. On April 28, 1982, the said grand jury indicted the Petioner for unlawfully possessing marijuana.

The Petitioner was arraigned on said indictment on November 29, 1982. On this same day, he waived jury trial and submitted the case to the trial court for decision based upon a transcript of the preliminary hearing. The trial court found him guilty and proceeded to sentence the Petitioner to five (5) years imprisonment.

The Petitioner appealed, and on May 3, 1983, the Alabama Court of Criminal Appeals (1 Div. 537) affirmed without opinion the Petitioner's conviction. On May 31, 1983, the same court denied his application for rehearing, again without issuing a written opinion.

On August 12, 1983, the Alabama Supreme Court (82-862) granted the Petitioner's petition for writ of certiorari and remanded the cause to the Court of Criminal Appeals. However, on October 3, 1983, after the Alabama Supreme Court considered the Respondent's brief, the Court withdrew its earlier decision and quashed the writ as having been improvidently granted.

STATEMENT OF THE FACTS

At approximatley 6:00 p.m. the day before the arrest, Deputy Sheriff Steve Grifface received information from a reliable informant, who had proved in the past to supply truthful and correct information, that the Petitioner, Everett Turberville, would have a large quantity of marijuana in a large brown suitcase, and further that the Petitioner would be driving a green "Falcon" automobile and staying at the Downtown Motor Court South Motel in Monroeville, Alabama. Deputy Grifface then ascertained which room the Petitioner was in, and at 7:00 p.m. he had Larry Ikener, District Attorney's Office investigator, keep the room and car under surveillance. Between 10:00 and 11:00 p.m. Deputy Grifface obtained a valid search warrant, however according to State law it was executable only

during the daytime.

While waiting to execute the warrant after sunrise, the officers continued the surveillance all night, until just before daylight. At that time the Petitioner left the motel room and went straight to the green "Falcon"; the officers did not have time to get to him before he got in his car. The Petitioner was observed carrying a large brown suitcase which he put on the back seat. Deputy Grifface followed him down Highway 21 until it was safe to stop the vehicle.

Deputy Grifface had the Petitioner stand at the rear of the car, and then he looked on the back seat for the suitcase. Deputy Grifface opened the suitcase, at which time he could smell the marijuana even though it was still wrapped in two (2) plastic gargage bags. He then seized the container, which contained

about twenty pounds (20 lbs.) of marijuana, and then placed the Petitioner under arrest. Deputy Grifface stated that if marijuana was not found in this container, the Petitioner would not have been arrested and would have been free to leave.

ARGUMENT

THE SEARCH AND SEIZURE OF A CONTAINER FILLED WITH MARIJUANA AND BEING TRANSPORTED BY THE DEFENDANT IN HIS CAR DID NOT VIOLATE THE FOURTH AMENDMENT.

A.

A VALID SEARCH WARRANT MEETING THE REQUIREMENTS OF THE FOURTH AMENDMENT HAD BEEN OBTAINED, THOUGH IT WAS NEVER EXECUTED.

In this case, Deputy Grifface received information from a previously proven reliable informant that a crime was being committed; that the Petitioner was in possession of a large quantity of marijuana. After verifying the supplied facts, Deputy Grifface sought to obtain a search warrant only hours after talking to his informant. A valid daytime search warrant, based on probable cause, was obtained. The time of day or night

when a search warrant may be executed is governed by § 15-5-8, Code of Alabama, 1975, which states, in pertinent part, "A search warrant must be executed in the daytime unless the affidavits state positively that the property is on the person or in the place to be searched, in which case it may be executed at anytime of the day or night." Deputy Grifface did not execute this warrant because it was based on probable cause, and not actual knowledge[1]. However, in the recent case Dickerson v. State, 414 So.2d 998 (Ala.Crim.App. 1982), the Alabama

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[1]From the time of receiving the information from the informant, to obtaining the warrant, to keeping the motel room under surveillance, to stopping the Petitioner driving away and searching the car, all occurred during the night-time. The State of Alabama submits that if the search had occurred minutes later, this entire issue would vanish, for it would have been daytime, and Deputy Grifface would have conducted his search pursuant to the search warrant.

Court of Criminal Appeals held that the positive averment requirement for a nighttime search warrant can be "satisfied by the hearsay information of a confidential informant." At p. 1012. Therefore, Deputy Grifface had in his possession knowledge that would have allowed him to obtain a valid nighttime search warrant.

Nevertheless, the Fourth Amendment warrant requirement was met. Deputy Grifface took to a judicial officer the informant's information after having verified it himself. The "neutral and detached" judicial officer determined that there was probable cause to issue a search warrant. The Fourth Amendment makes no distinction between daytime and nighttime warrants, only State law does. It simply says that we are secure against unreasonable searches and seizures, and that the issuance of a warrant must be

based on probable cause. Notwithstanding our State's distinction between day and night search warrants, the warrant obtained by Deputy Grifface was undisputably issued based on probable cause. Therefore, when Deputy Grifface searched for the marijuana, there had been a search warrant issued by a neutral and detached judicial officer who determined that there was probable cause as required by the Fourth Amendment, to believe that this Defendant was in possession of a controlled substance, to-wit: marijuana, contrary to Alabama law.

Therefore, the requirements of the Fourth Amendment were met--a search warrant had been issued based upon probable cause--however, due to a mistaken belief as to State law, the police officer did not conduct the search pursuant to the valid warrant.

B.

THE PROBABLE CAUSE SEARCH WAS REASONABLE BASED ON THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT.

Notwithstanding the fact that the unexecuted search warrant had been issued based on probable cause, which was judicially determined to exist, the subsequent "warrantless" search was reasonable based on the automobile exception. This exception, first developed in Carroll v. United States, 267 U.S. 132, 69 L.Ed.2d 543, 45 S.Ct. 289 (1925), allows police officers who have probable cause to believe that an automobile contains contraband to search that vehicle without a warrant. Subsequently, in Chambers v. Maroney, 399 U.S. 42, 26 L.Ed.2d 419, 90 S.Ct. 1975 (1970), the Supreme Court stated:

> For constitutional purposes, we see no difference between on the one hand seizing and

> holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.
>
> 399 U.S. at 52, 26 L.Ed.2d 419, 90 S.Ct. 1975.

Therefore, if police officers have probable cause to search a car, they can stop it and do so without a warrant.

This exception was somewhat narrowed by United States v. Chadwick[2], 433 U.S. 1, 53 L.Ed.2d 538, 97 S.Ct. 2476 (1977) and Arkansas v. Sanders[3], 442 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct. 2586 (1979).

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[2]A footlocker placed in the trunk of a parked car, which the officers knew for two days that it would be arriving.

[3]Officers were informed that the Defendant would fly-in later that afternoon carrying a green suitcase. The officers waited until he started leaving in a taxi at which time they stopped the taxi, opened the vehicle's trunk and seized and searched the suticase.

These cases allowed the probable cause based seizure of the vehicle and all containers therein, but required officers to obtain a search warrant before opening the container. This was based upon a greater expectation of privacy in closed, opaque containers than in the vehicle itself. The reasoning/holding of these two cases was affirmed in Robbins v. California[4], 453 U.S. 420, 69 L. Ed.2d 744, 101 S.Ct. 2841 (1981).

However, in United States v. Ross, 456 U.S. 798, 72 L.Ed.2d 572, 102 S.Ct. 2157 (1982), the Supreme Court in effect overruled Robbins, supra, and rejected some of the reasoning in Sanders, supra. The current status of Sanders is best stated by Justice Marshall in his

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[4]Officers unwrapped bricks of marijuana wrapped in opaque, plastic garbage bags found hidden in back of a stationwagon.

dissenting opinion in Ross, "Sanders is therefore effectively overruled." 72 L.Ed.2d at 604. In Ross, supra, the Court stated and held that:

> In this case, we consider the extent to which police officers--who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it--may conduct a probing search of compartments and containers within the vehicle whose contents are not in plain view. We hold that they may conduct a search of the vehicle that is as thorough as a magistrate could authorize in a warrant "particularly describing the place to be serached."
>
> 456 U.S. at 800, 72 L.Ed.2d at 578.

In this case, it is undisputed that the officers had probable cause to believe there was contraband in the Defendant's car, for they observed the Defendant put into the car a suitcase that they had probable cause (judicially determined even) to believe contained marijuana.

Furthermore, this Court followed its decision in Ross in United States v. Moschetta, 646 F.2d 955 (5th Cir. 1981)[5] rem'd sub nom United States v. Spieler, _ U.S. ___, 73 L.Ed.2d 1324, ___S.Ct.___ (1982), in which a warrantless search of a briefcase removed from the trunk of a car was eventually upheld based on Ross, thus reversing the suppression of the briefcase.

Just as if the officers were executing a search warrant, in conducting a warrantless search based on Ross, supra, they can only open those containers which could contain the object of the search. As the Court said in Ross, supra:

> Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search

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[5]Now 11th Circuit.

> an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed in the trunk [or on the rear seat] of a taxi contains contraband or evidence does not justify a search of the entire cab. (Emphasis added).
>
> 456 U.S. at 824, 72 L.Ed.2d at 593.

Herein Deputy Grifface stated that he was only looking for the suitcase and that the suitcase was the only container that was opened. He did not even open the clothes bag that was on top of the suitcase. His probable cause to search was limited to the suitcase and that was the only container, and area of the vehicle, that was searched. As stated further in Ross, supra:

> The scope of a warrantless search based on probable cause is no narrower--and no broader--than the scope of a search authorized by a warrant

> supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.
>
> The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. (Emphasis added).
>
> 456 U.S. at 823-824, 72 L.Ed.2d at 593.

Therefore, Deputy Grifface restricted the scope of his search to that which would have been authorized by a warrant. His search was therefore a valid search within the confines of the automobile exception to the Fourth Amendment's warrant requirement.

CONCLUSION

In conclusion the State of Alabama, Respondent, respectfully submits that the decisions and opinions of the Alabama Courts are patently correct and entirely consistent with the decisions of this Honorable Court and that the writ is due to be denied and the Respondent prays such denial.

Respectfully submitted,

CHARLES A. GRADDICK
ATTORNEY GENERAL

RICHARD L. OWENS
ASSISTANT ATTORNEY GENERAL

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on Attorney for the Appellant, by placing a copy in the United States mail, postage prepaid.

Paul M. Harden
Attorney at Law
201 Pineville Road, Suite 5
Monroeville, Alabama 36460

DONE this _____ day of January, 1984.

RICHARD L. OWENS
ASSISTANT ATTORNEY GENERAL

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